

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KENNETH DAVIS,

Plaintiff,

v.

Civil Action No.: 1:06CV111

**REMY ROSENHOOVER, AVIS BUDGET
CAR RENTAL, L.L.C. AND PROGRESSIVE
SPECIALTY INSURANCE COMPANY,**

Defendants.

OPINION/ORDER

This matter is before the undersigned United States Magistrate Judge pursuant to “Progressive’s Objection to Discovery” [DE 21] and Plaintiff’s “Response” thereto [DE 23]. This matter was referred to the undersigned by United States district Judge Irene M. Keeley by Order dated November 7, 2006 [DE 32].

This matter concerns an automobile accident that occurred on or about March 29, 2005. Plaintiff filed a Complaint in state court against all three defendants. Defendants removed the case to this Court on or about July 21, 2006 [DE 1]. Progressive Specialty Insurance Company (“Progressive”) filed its Answer along with a Counterclaim for Declaratory Judgment on July 21, 2006 [DE 4]. Progressive moves the Court for an entry of Declaratory Judgment, asserting that the Progressive policy in issue does not provide coverage for the events described in the Complaint. The Court notes that Avis has likewise requested Declaratory Judgment. Plaintiff filed a Motion for Remand on July 26, 2006 [DE 8].

Plaintiff requested discovery from Progressive on September 28, 2006. Progressive Objected to the discovery requests as premature under LR Civ. P. 16.01, 26.01, and FR Civ P 26(d), arguing that the discovery was premature because the Court had not yet conducted a Scheduling Conference in the matter.

The undersigned first notes that Rule 26(d) refers to the parties' Rule 26(f) Planning Conference, and not the Court's Scheduling Conference. The undersigned also notes the parties did participate in a Rule 26(f) conference on or before November 3, 2006 (see DE 30, Scheduling conference Report). It is therefore clear that Plaintiff's discovery requests, made on September 28, 2006, violated Rule 26(d).

Plaintiff states in his Response that he and Defendants Rosenhoover and Avis all agreed to proceed with discovery prior to the Planning Meeting.

The Court finds that Plaintiff did violate Rule 26(d), and that Progressive was therefore not required to respond to the discovery requests. For reasons apparent to the Court including but not limited to the need to timely complete discovery relative to the issues pending before the District Judge, however, and pursuant to the Court's discretion under Rule 26(d) and its general power to direct discovery, the Court

ORDERS Progressive to respond to Plaintiff's September 28, 2006, Request for Production of Documents within ten (10) days of entry of this Order. The Court notes that this Order does not enlarge the time frame in which Progressive's Rule 26(a) disclosures are due.

It is so **ORDERED**.

Dated: November 14, 2006.

/s *John S. Kaull*

JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE